

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:19-cr-20570

Case No. 1:21-cv-11767

v.

Honorable Thomas L. Ludington
United States District Judge

MICHAEL LAWRENCE WALLACE,

Defendant.

Honorable Patricia T. Morris
United States Magistrate Judge

_____ /

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION,
DISMISSING DEFENDANT'S MOTION WITH PREJUDICE FOR WANT OF
PROSECUTION, AND DENYING GOVERNMENT'S MOTION AS MOOT**

This matter is before this Court upon Defendant's Motion to Vacate Under 28 U.S.C. § 2255. For the reasons stated hereafter the civil case for the Motion will be dismissed with prejudice.

On July 16, 2021, Defendant Michael Lawrence Wallace filed a pro se motion under 28 U.S.C. § 2255, alleging ineffective assistance of his trial counsel, Mr. Stevens Jacobs, which was referred to Magistrate Judge Patricia T. Morris, ECF Nos. 29; 32. On September 9, 2021, the Government filed a motion to dismiss Defendant's Motion because it was not sworn and signed, which was also referred to Judge Morris. ECF Nos. 35; 37. Plaintiff never responded, so Judge Morris directed him to respond to the Government's Motion on or before October 7, 2021. ECF No. 38.

Petitioner sent a letter, filed on September 24, 2021, seemingly indicating he intended to withdraw his Motion to Vacate. *See* ECF No. 40. On October 13, 2021, Judge Morris sent a notice to Petitioner, informing him as to how to withdraw his Motion if he so intended. ECF No. 41. Having not heard anything from Petitioner, on November 22, 2021, Judge Morris entered an Order

to Show Cause why Defendant's Motion should not be dismissed for failure to prosecute. ECF No. 42. Petitioner had until December 13, 2021, to respond to the Show-Cause Order, but he did not.

On December 20, 2021, Judge Morris issued a report recommending that this Court dismiss Defendant's Motion for want of prosecution sua sponte under Federal Rule of Civil Procedure 41(b) and Local Rule 41.2. ECF No. 43.

Although Judge Morris gave Plaintiff 14 days to object under Federal Rule of Civil Procedure 72(b)(2), he still has not responded. This Court may dismiss a complaint sua sponte for failure to prosecute. *Link v. Wabash R.R.*, 370 U.S. 626, 630–32 (1962).

As Judge Morris articulated, the Sixth Circuit employs four factors to determine whether the court should dismiss a petition for want of prosecution under Rule 41(b):

(1) whether the party's failure is due to willfulness, bad faith, or fault; (2) whether the adversary was prejudiced by the dismissed party's conduct; (3) whether the dismissed party was warned that failure to cooperate could lead to dismissal; and (4) whether less drastic sanctions were imposed or considered before dismissal of the action.

Saulsberry v. Holloway, 622 F. App'x 542, 545 (6th Cir. 2015) (quotation omitted).

According to Judge Morris, the first factor supports dismissing Defendant's Petition, as "Petitioner appears to have wanted to withdraw his motion to vacate sentence but simply failed to follow through on the process." ECF No. 43 at PageID.138. The second factor supports the same, Judge Morris states, because "Defendant is prejudiced by Plaintiff's abandonment of the case." *Id.* "As to third factor," Judge Morris elaborated, "Plaintiff was warned in the Order to Show Cause of the potential consequence of his inaction; therefore, this factor also weighs in favor of dismissal." *Id.* Judge Morris concludes that the fourth factor also supports dismissal, because "a sanction short of dismissal would [not] be appropriate in this matter." *Id.* (first citing *Bullard v. Roadway Exp.*, 3 F. App'x 418, 421 (6th Cir. 2001) (unpublished) (per curiam); and then citing

Morley v. Comm’r of Soc. Sec., No. 12-14653, 2013 WL 2051326, at *1 (E.D. Mich. May 14, 2013)).

Judge Morris’s analysis is sound, and this Court finds no reason to depart from it. For that reason, Judge Morris’s Report and Recommendation will be adopted, Defendant’s Motion will be dismissed with prejudice, and the Government’s Motion to Dismiss will be denied as moot.

Accordingly, it is **ORDERED** that the Report and Recommendation, ECF No. 43, is **ADOPTED**.

Further, it is **ORDERED** that Defendant’s Motion to Vacate Under 28 U.S.C. § 2255, ECF No. 29, is **DISMISSED WITH PREJUDICE** for failure to prosecute.

Further, it is **ORDERED** that Government’s Motion to Dismiss the Petition, ECF No. 35, is **DENIED AS MOOT**.

Dated: October 12, 2014

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge